Canadian Artists and Producers Professional Relations Tribunal

2009-2010
Estimates

Part III - Report on Plans and Priorities

Canadian Artists and Producers Professional Relations Tribunal

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Estimates

Report on Plans and Priorities

Approved:

The Honourable Rona Ambrose
Minister of Labour

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Message from the Chairperson

I am pleased to present the 2009-2010 *Report on Plans and Priorities* for the Canadian Artists and Producers Professional Relations Tribunal ("CAPPRT" or "the Tribunal"). This report outlines the Tribunal's intended direction for the next three years.

The Tribunal is committed to the development and maintenance of constructive professional relations between artists and producers, and to the economic and social well-being of its stakeholder community. As one of more than twenty federal organizations supporting a vibrant Canadian culture, the Tribunal is an important part of a complex whole, making a critical contribution to long-term progress for the cultural sector.

The Tribunal's principal responsibility is to adjudicate matters brought before it under the *Status of the Artist Act*. The Tribunal will continue to provide fair and timely resolution of these matters, and continue to develop a solid body of precedents and case law that can be used to help resolve future cases.

In addition, the Tribunal plays an informative role, promoting increased collaboration between artists, artists' associations and producers, increasing their understanding of their rights and obligations under the *Act*, and supporting the collective bargaining process by providing impartial, timely information. In this respect, we will continue to emphasize the value of mediation to help parties reach scale agreements, manage their relationships under scale agreements, and resolve complaints without the need for formal hearings.

Ultimately, the work of the Tribunal contributes to harmonious professional relations in the cultural sector, which in turn contributes to better conditions of engagement for artists and a more stable, predictable workforce for producers.

In 2009-2010, the Tribunal will continue to focus its efforts on informing artists and producers about the *Status of the Artist Act*, in order to permit them to fully exercise their rights and fulfil their responsibilities under the *Act*. We will maintain close contact and communication with our stakeholders and partners to ensure the relevance of our services and activities.

The Tribunal will continue to assist the parties in the negotiation process under the *Status of the Artist Act*, ensuring that they have ready access to information and mediation assistance when they need it. It will provide a high quality of service in dealing with adjudicative matters within its statutory responsibilities. These include complaints of unfair labour practices and other matters brought forward by artists, artists' associations, producers, and labour arbitrators, determination of sectors of cultural activity suitable for collective bargaining, and certification of artists' associations to represent self-employed artists working in these sectors.

I feel compelled to note at this point that, however optimistic and enthusiastic we at the Tribunal may be, the Tribunal's ability to meet its commitments depends on a sufficient number of members being appointed to ensure quorum to hear cases.

Integrity, timeliness, confidentiality and impartiality are among the values that guide the ongoing activities of the Tribunal. The Tribunal members and staff, even faced with a shortage of members and an inability to make quorum, will make every effort in the year ahead to promote harmonious professional relations in the cultural sector. I look forward to leading the Tribunal in this endeavour.

Elaine M. Kierans
Acting Chairperson and Chief Executive Officer
February 1, 2009

Section I – Overview

1.1 Summary Information

Raison d'être

Parliament created the Canadian Artists and Producers Professional Relations Tribunal to administer Part II of the *Status of the Artist Act*, which sets out a structure for professional relations between self-employed artists and producers in federal jurisdiction. The Tribunal defines sectors of artistic activity for collective bargaining, certifies artists' associations to represent self-employed artists working in those sectors, and deals with complaints of unfair labour practices from artists, artists' associations and producers.

Responsibilities

The Canadian Artists and Producers Professional Relations Tribunal administers Part II of the *Status of the Artist Act*. Its objective is to contribute to Canada's cultural community by encouraging constructive professional relations between artists and producers in federal jurisdiction.

The Tribunal has the following main responsibilities:

- To define the sectors of cultural activity suitable for collective bargaining between artists' associations and producers within the Tribunal's jurisdiction, and certify artists' associations to represent self-employed artists working in these sectors; and
- To deal with complaints of unfair labour practices and other contraventions of Part II of the *Act* brought forward by artists, artists' associations or producers, and prescribe appropriate remedies.

Parliament passed the *Status of the Artist Act* as part of a commitment to recognize and stimulate the contribution of the arts to the cultural, social, economic and political enrichment of the country. The *Act* reflects the recognition that constructive professional relations in the arts and culture sector are an important element of a vibrant Canadian culture and heritage.

Since its inception, the Tribunal has defined 26 sectors of artistic activity and certified 24 artists' associations to represent them. Certified artists' associations have concluded over 150 scale agreements with producers, including government producers and specialty television services, since their certification. Over 20 percent of these are the first agreements that the parties have ever concluded.

The Tribunal reports to Parliament through the Minister of Labour.

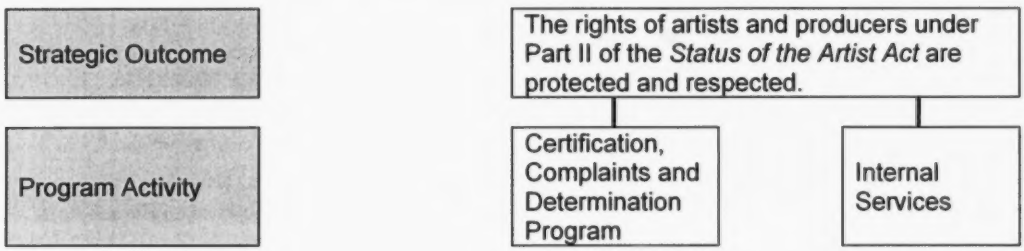
Strategic Outcome

The Tribunal seeks to achieve the following strategic outcome:

The rights of artists and producers under Part II of the *Status of the Artist Act* are protected and respected.

Program Activity Architecture

The chart bellow illustrates the Tribunal's program activities, which contribute to its strategic outcome.


Strategic Outcome
The rights of artists and producers under Part II of the Status of the Artist Act are protected and respected.
Program Activity
Certification, Complaints and Determination Program
Internal Services

1.2 Planning Summary

Financial Resources

Financial Resources	2009-10	2010-11	2011-12
($ millions)	2.0	2.0	2.0

The financial resources table above provides a summary of the total planned spending for the Tribunal for the next three fiscal years.

Human Resources

Human Resources	2009-10	2010-11	2011-12
Full-Time Equivalents (FTEs)	10	10	10

The human resources table above provides a summary of the total planned human resources for the Tribunal for the next three fiscal years.

Strategic Outcome: The rights of artists and producers under Part II of the *Status of the Artist Act* are protected and respected.

Performance Indicators	Targets
Cases are resolved in a fair and timely way, with natural justice and administrative fairness observed, Stakeholders have easy, timely access to information about the *Act* and about Tribunal decisions and activities: • Average number of calendar days between hearing and issue of reasons • Average time to process cases from application to issue of reason for decision • Cases are upheld on judicial review • Requests for mediation assistance result in complaints resolved and in agreements reached or renewed • Prompt response to requests for Information • Timely information bulletins • Stakeholder satisfaction	• Average time between hearing and issue of reasons does not exceed 60 calendar days • Average time to process all cases from application to issue of reason for decision does not exceed 200 days • At least 75% of cases are upheld on judicial review • 75% of requests for complaints mediation assistance result in complaints resolved • 75% of requests for bargaining mediation assistance result in agreements reached or renewed • Information requests responded to within 2 working days • Information bulletins published within 60 days of decisions and other major events • Stakeholders are satisfied, based on ongoing informal survey

Program Activity	Expected Results	Forecast Spending ($ millions)	Planned Spending ($ millions)			Alignment to Gov't of Canada Outcomes
		2008-09	2009-10	2010-11	2011-12	
Certification, Complaints and Determination Program	Fair and timely resolution of cases. Stakeholders have easy, timely access to information about the *Status of the Artist Act* and their rights and responsibilities under it, and about Tribunal decisions and activities	2.0	1.2	1.2	1.2	Vibrant Canadian Culture and Heritage
Internal Services	Support to Tribunal to ensure it has necessary tools to provide fair and timely resolution of cases.	0	0.8	0.8	0.8	Vibrant Canadian Culture and Heritage
Total Planned Spending		**2.0**	**2.0**	**2.0**	**2.0**	

Contribution of Priorities to Strategic Outcome

As noted above, the Tribunal has a single strategic outcome, to which all its operational priorities contribute.

Operational Priorities	Type	Description
Deal with matters brought before Tribunal with high quality service	Ongoing	The CAPPRT, like any administrative tribunal, has a duty to ensure that cases are resolved fairly and in a timely way, fully respecting the requirements of natural justice and administrative fairness.
Fully inform and assist stakeholders	Ongoing	Through its outreach and communication activities, the Tribunal builds stakeholder awareness of the *Status of the Artist Act* and the rights and responsibilities that flow from it.
Management Priorities	**Type**	**Description**
Improve management practices	Ongoing	Like any government agency, the Tribunal must continually strive to modernize and improve its management practices, in order to support the Tribunal in its decision-making and administrative capacities.

Risk Analysis

The nature of the Tribunal's mandate and its business environment makes the organization relatively risk averse. The same observation could be made of any quasi-judicial organization. Accordingly, the Tribunal has in place numerous management strategies to mitigate potential risks. It must be noted, however, that the most important risk is that an insufficient number of members to assure quorum for hearings will be appointed. The Tribunal, when it lacks quorum, cannot process cases before it. It can facilitate mediation between parties who are waiting for the Tribunal to be able to hear their case. Mediation, it should be noted, is not feasible for all cases.

Like any court or administrative tribunal, the CAPPRT must be prepared to deal with highs and lows of case volume. The Tribunal's services must be available to artists and producers as and when the need arises. The Tribunal has certified artists' associations to represent most sectors under its jurisdiction, so its certification work is relatively predictable. Complaints under the *Act* and references from arbitrators are less predictable and can arise at any time.

The current economic crisis has begun to affect the arts and culture sector, and the impact is expected to become more severe in the immediate future. If economic problems result in parties having difficulty meeting their obligations under the *Act* or reaching agreements under it, there may be an increase in demand for the Tribunal's services. Even certification work could increase, if an unstable economy gives rise to challenges to representation.

The Tribunal has traditionally been able to manage the unpredictability of caseloads by judicious planning and budgeting within its existing appropriation levels for both human and financial

resources. In years where its total appropriations have not been used, it has returned funds to the Consolidated Revenue Fund.

Expenditure Profile

For the 2009-2010 fiscal year, the Tribunal plans to spend $2.0 million to meet the expected results of its program activities and contribute to its strategic outcome.

For the 2006-2007 to 2008-2009 periods, the total spending includes all Parliamentary appropriation: Main Estimates, Supplementary Estimates, Treasury Board Vote 10, 15, and 23. It also includes carry forward adjustments. For the 2010-2011 to 2012-2013 periods, the total spending corresponds to the planned spending. Supplementary funding and carry forward adjustments are unknown at this point and are therefore not reflected.

The core funding illustrates the baseline funding that the Tribunal receives from Parliamentary appropriation.

Since 2006-2007, the Tribunal's core spending has declined. This is a reflection of changes in hearing activity. Levels of hearing activity are broadly predictable but, as with any quasi-judicial tribunal, inevitably vary from year to year.

Voted and Statutory Items

This table illustrates the way in which Parliament approved the Tribunal's resources, and shows the changes in resources derived from supplementary estimates and other authorities, as well as how funds were spent.

Vote # or Statutory Item (S)	Truncated Vote or Statutory Wording	2008-09 Main Estimates ($ millions)	2009-10 Main Estimates ($ millions)
20	Program expenditures	1.8	1.8
(S)	Contribution to employee benefit plans	0.2	0.2
	Total	2.0	2.0

Section II – Analysis of Program Activities by Strategic Outcome

2.1 Strategic Outcome

The rights of artists and producers under Part II of the *Status of the Artist Act* are protected and respected.

The following section describes the Tribunal's program activities and identifies the expected result, performance indicators and targets for each of them. This section also explains how the Tribunal plans on meeting the expected results and presents the financial and non-financial resources that will be dedicated to each program activity.

This section will contain a discussion of the following Program Activities:

- Certification, Complaints and Determination Program
- Internal Services

Additional information on the Tribunal's performance measurement framework and methodology can be found on the Tribunal's website (www.capprt-tcrpap.gc.ca).

2.1.1 Program Activity: Certification, Complaints and Determination Program

Expected Results of Program Activity: Fair and timely resolution of cases. Stakeholders have easy, timely access to information about the *Status of the Artist Act* and their rights and responsibilities under it, and about Tribunal decisions and activities	
Performance Indicators:	***Targets:***
• Average number of calendar days between hearing and issue of reasons	• Average time between hearing and issue of reasons does not exceed 60 calendar days
• Average time to process cases from application to issue of reason for decision	• Average time to process all cases from application to issue of reason for decision does not exceed 200 days
• Cases are upheld on judicial review	• At least 75% of cases are upheld on judicial review
• Requests for mediation assistance result in complaints resolved and in agreements reached or renewed	• 75% of requests for complaints mediation assistance result in complaints resolved • 75% of requests for bargaining

	mediation assistance result in agreements reached or renewed
• Prompt response to requests for Information	• Information requests responded to within 2 working days
• Timely information bulletins	• Information bulletins published within 60 days of decisions and other major events
• Stakeholder satisfaction.	• Stakeholders are satisfied, based on ongoing informal surveying

Financial Resources ($ millions)		
2009-10	2010-11	2011-12
1.2	1.2	1.2

Human Resources (Full-time Equivalents)		
2009-10	2010-11	2011-12
7.0	7.0	7.0

Program Activity Summary:

This program activity includes the Tribunal's quasi-judicial determinations activity relating to certification applications, complaints (such as bad faith bargaining, failure in the duty of fair representation, etc.), and referrals by arbitrators under the *Act*. It also includes the research and outreach structure necessary to ensure that stakeholders and the public have easy, timely access to information about the *Status of the Artist Act* and their rights and responsibilities under it, and about Tribunal decisions and activities.

Planning Highlights: In order to achieve the expected result, the Tribunal plans to undertake the following activities:

- The Tribunal will continue to focus on carrying out its statutory mandate fairly and in a timely manner. The Tribunal will ensure that the time required to issue reasons for decisions after hearings, and the total time required to process cases, from the date an application is received until the date of the decision, meet or surpass the targets shown in the table above. (The Tribunal's commitment on this point assumes, of course, that it will have a sufficient number of members to assure quorum and be able to hold hearings.)

- The Tribunal will assess its fairness – encompassing impartiality, accessibility, integrity, and confidentiality – using as an indicator the percentage of its decisions upheld on judicial review. The Federal Court may review a Tribunal decision in the following circumstances:

    - if the Tribunal acted without jurisdiction or beyond its jurisdiction or refused to exercise its jurisdiction;

- if it failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe; or

- if it acted, or failed to act, by reason of fraud or perjured evidence.

- The indicator is imperfect, because parties may be dissatisfied with Tribunal decisions but not seek judicial review, for any number of reasons, including lack of resources. Nonetheless, the Federal Court acts as the arbiter of fairness of federal quasi-judicial tribunals, so this is an important indicator. The Tribunal has set as a target that more than 75 percent of its cases are upheld on judicial review.

- Stakeholder satisfaction is not necessarily a good indicator of fairness – parties may be dissatisfied with Tribunal decisions that are fair but do not go their way – and measuring it in any systematic way through stakeholder surveys is impractical and would be a burden on the stakeholders. Nonetheless, in our informal contacts with the stakeholder community of artists, artists' associations, and producers we pay close attention to how they view the Tribunal and the fairness of its processes.

- An important outcome of fair Tribunal decisions is the development of a solid body of precedents. These can be used to help resolve future cases.

- The Tribunal will fully inform and assist the artists, artists' associations, and producers that make up its stakeholder community. One way that the Tribunal does this is through timely responses to inquiries. The Tribunal receives a wide variety of questions from stakeholders, dealing with subjects like jurisdiction, specifics of the various cultural industries, and how to use the *Act*. Tribunal staff members respond to these questions quickly and thoroughly, always inviting further comment or question. Inquiries will be responded to within 2 working days.

- With respect to more general information needs about the *Act* and the Tribunal's services and activities, the Tribunal has traditionally used information bulletins, regularly-updated information on its Web site, and information sessions for stakeholders. Follow-up with stakeholders has shown that these are well received and considered useful. The Tribunal has recently emphasized more tailored and customized information over group information sessions. Its various stakeholders have different, often quite specific, needs for information. More focused, personalized information and small group or individual meetings are an effective way of addressing stakeholders' needs.

- The Tribunal will continue to emphasize these more direct approaches to stakeholders, including participation in industry conferences that bring stakeholders together. Tribunal staff will continue to meet informally in 2009-2010 with a cross-section of stakeholders from the artists' and producers' communities, to identify and meet their information needs. It will issue information bulletins on an as-required basis, to report important developments at the Tribunal or with the *Act*.

- The Tribunal will also continue revising its website to make it more helpful and accessible. A major restructuring of the website to bring it into compliance with the

government's Common Look and Feel standards was undertaken in 2008-2009. In the coming fiscal year the Tribunal will make any further revisions necessary to address any gaps identified in the Treasury Board Secretariat's assessment process.

The indicators and targets for measuring the Tribunal's attainment of this objective are set out below.

Objective: Availability to stakeholders of information	
Indicator	***Target***
Quality and timeliness of information	Bulletins issued within 60 days of major developments (e.g., Tribunal decisions). Responses to inquiries within two working days. Responses thorough and correct. Stakeholders are satisfied (as determined by stakeholder consultations).
Quality of the Tribunal's Web site	The Web site contains timely, accurate and helpful information, explains clearly how to do business with the Tribunal, and meets Government On-Line standards. Stakeholders are satisfied (as determined by stakeholder consultations).
Direct contacts with stakeholders	Meetings are held with at least four artists' associations and four producers or producers' associations. Stakeholders are satisfied, as determined in consultation.

Benefits for Canadians: This program activity contributes to harmonious professional relations in the cultural sector, which in turn contributes to better conditions of engagement for artists and a more stable, predictable workforce for producers. This is a critical contribution to a vibrant Canadian culture, the economic benefits of which have been amply demonstrated by recent research.

2.1.2 Program Activity: Internal Services

Financial Resources ($ millions)		
2009-10	2010-11	2011-12
0.8	0.8	0.8

Human Resources (Full-time Equivalents)		
2009-10	2010-11	2011-12
3.0	3.0	3.0

Program Activity Summary & Planning Highlights:

Internal Services are activities and resources that support the needs of the Tribunal's operating program and other corporate obligations. They include administrative, human resources, financial, information management services, and information technology services.

The Tribunal has internal service expectations and monitors overall service performance of its internal services. The Tribunal has a sound results-oriented framework utilizing the Management Accountability Framework (MAF) and a quality assurance framework that will continue to ensure that services are conducted in a timely and cost effective manner.

The Tribunal's internal services have had to be carefully designed to take into account the extremely small size of the organization. The Tribunal outsources some corporate services that are not required on a full time basis. For example, it contracts with Canadian Heritage for human resources services, and with the Public Service Labour Relations Board and Industry Canada for informatics, security, and mail services. It has arrangements with two other federal labour boards to use their hearing rooms and library services.

Section III: Supplementary Information

3.1 Other Items of Interest

Contact Information

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Email: info@capprt-tcrpap.gc.ca
Website: www.capprt-tcrpap.gc.ca

Statute and Regulations

Status of the Artist Act	S.C. 1992, c.33, as amended
Status of the Artist Act Professional Category Regulations	SOR 99/191
Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations	SOR/2003-343

Statutory Responsibilities

The *Status of the Artist Act* requires or permits the Tribunal to undertake the following activities:

1. pass by-laws governing the conduct of its affairs [subs.11(2)];
2. hold meetings or proceedings of the Tribunal at such times and locations in Canada as it considers desirable [subs.13(2)];
3. make regulations of general application which it considers conducive to the performance of its duties [s.16];
4. make interim orders [subs.20(2)];
5. rescind or amend determinations or orders and rehear applications [subs.20(1)];
6. file a copy of its order or determination in the Federal Court for purposes of enforcement [s.22];
7. review by-laws of artists' associations [s.23];
8. receive copies of membership lists filed by associations of producers [s.24];
9. receive applications for certification from artists' associations pursuant to s.25 and provide public notice of the application;
10. determine the appropriateness of sectors for collective bargaining [s.26];
11. determine whether an artists' association is representative of the sector for which it seeks certification [s.27];
12. certify artists' associations to represent specific sectors [s.28];

13. maintain a register of all certificates issued [subs.28(4)];
14. receive, consider and decide applications for revocation of certification [s.29];
15. determine the rights, duties and privileges acquired by an artists' association following a merger, amalgamation or transfer of jurisdiction [s.30];
16. determine whether contractual conditions are "more favourable" to an artist than those contained in a scale agreement [subs.33(5)];
17. change the termination date of a scale agreement when so requested by the parties [s.34];
18. hear and determine questions referred to it by an arbitrator or arbitration board [s.41];
19. hear and decide on applications for a declaration that the use of pressure tactics is unlawful and prescribe appropriate remedies [ss.47,48,49];
20. hear and decide applications alleging unfair labour practices and prescribe appropriate remedies [ss.53,54];
21. issue consent to prosecute [s.59];
22. establish other offices which it considers necessary [subs.13(1)];
23. prepare and submit an annual report to Parliament through the Minister of Labour regarding activities during the fiscal year [s.61].